



POLICY & ACTION FROM CONSUMER REPORTS

October 16, 2012

RE: Blue Cross Blue Shield conversion proposal (SB 1293 & SB 1294)

Good Afternoon, Chairman Hume and members:

My name is Laurie Sobel and I am a senior attorney with the Consumers Union, the policy and advocacy division of Consumer Reports. We urge no action on SB 1293 and SB 1294 until a proper analysis can be done with all of the necessary information.

Over the last 16 years, CU has assisted legislators, courts, and regulators reviewing conversions of non-profits to mutuals and for-profit status and other health entity transactions in more than 40 states. CU has provided technical assistance to community groups and other interested parties to ensure that any change to the nonprofit mission take place with transparency and accountability.

This is a large complex issue. Time is needed to fully engage all the stakeholders, and obtain all the information to properly consider any change in ownership and mission for the Blues. Typically – other states - had a process to oversee any change in corporate structure to their Blues plans that took between 6 and 9 months to gather all the information, hold public evidentiary hearings in which stakeholders were permitted to intervene as parties, and make a decision that protected consumers' access to affordable health care, and preserved the charitable assets. Take your time, and protect this valuable charitable asset and the consumers of Michigan.

If BCBSM would like to be released of its community obligations, and become a mutual corporation, the regulatory review should answer the question about whether such a conversion would be in the public interest. The process should be transparent, encourage public dialogue, engage diverse elements of the community, and foster consensus about community health improvement goals.

If you want to pass a bill to help the process, we have a model bill on conversions that I urge you to consider. We have also have a model bill on the rate review process that you could use to "level the playing field" and enhance Michigan's review of proposed health insurance rates to protect consumers from unreasonable premiums.

There is no urgency to this conversion now.

BCBS of Michigan has come to legislature many times before screaming, "Fire." There is no fire. There are currently twenty five other charitable mission Blue Cross Blue Shield organizations throughout the country, none of which, that we can find, are seeking conversion prior to January 1, 2014, when the Affordable Care Act takes full effect. BCBSM is claiming that they cannot participate on the exchange without this conversion. This is false. All insurers (nonprofit, mutual, or for-profit) will have to go through the same certification process to ensure existing products meet the certification standards established by the healthcare exchange

In our work, we have seen it all. After regulators became more sophisticated in their review of "conversions" plans changed the name to "affiliation." And now we see a new name, "transition." We still call it a conversion and it should be treated as such. These bills would allow BCBSM to abandon its

charitable mission and convert to a mutual company owned by its policyholders. It is a change in ownership and mission. **This is a conversion.**

Any change in Blue Cross Blue Shield's status must first consider the impact on consumers. BCBS of Michigan is a unique entity created by law in 1939 to address the ability of Michiganders to secure basic health care. By law, its only reason to exist is: "to secure for all people of this state...the opportunity for access to health care services at a fair and reasonable price." To accomplish this purpose, Blue Cross was declared as a matter of law "to be a charitable and benevolent institution." As Attorney General Granholm said in 2002, when the prospect of a Blue Cross conversion to for-profit status was being considered, in forming Blue Cross and Blue Shield "the Michigan legislature created a charitable trust for the benefit of Michigan citizens." In other words, the people of Michigan are the shareholders and intended beneficiaries of Blue Cross; it exists to serve the people of Michigan, not the other way around.

An independent valuation study is necessary to protect and preserve the charitable assets.

The Attorney General is correct that now is the time to conduct an independent valuation study when BCBM is ending its charitable mission. BCBM is proposing a change in ownership from the community to its policy holders. Would you sell your house, and figure out the full fair market value later? If you wait, how would you figure out which part of the value is owned by the community and which part of the asset is owned by the policyholders?

Prior experiences in Connecticut, Kentucky, and Ohio demonstrate the difficulty in conducting such "look back" studies. In these states, regulators permitted their BCBS plan to convert from a nonprofit to a mutual without valuating or setting aside the charitable assets at the time. Years later, through litigation, the regulators were able to preserve some charitable assets, but pennies on the dollars when compared to states that valued the charitable assets at the time of the conversion. Through litigation, KY preserved \$45 million, Ohio preserved \$28 million, and Connecticut preserved \$41 million. In contrast, after an independent valuation at the time of the sale to Anthem, the purchase price for BCBS of Maine was \$120 million and a new health conversion foundation was founded with an \$82 million endowment. Likewise, BCBS of New Hampshire was sold to Anthem for \$120 million and \$83 million was set aside in a new health foundation. (The difference in price and foundation amounts is due to the debt paid off.) And in Colorado, \$155 million was set aside when BCBS of Colorado became a subsidiary of a mutual company, Anthem. In December 2002, years after Health Care Services Corporation (HCSC) became a mutual, HCSC entered into a settlement agreement with the Attorney General of Illinois, under which it set aside \$124.6 million in a health care foundation, recognizing its prior nonprofit charitable status. Because the valuation was not done at the time of the conversion from nonprofit to mutual, the people of Illinois will never know if they were robbed of the full value of the charitable assets.

Defining the value of a nonprofit corporation's assets is best done by experts, such as investment banking firms, independent of the parties to the transaction. Because there is a variety of valuation methods used in the industry, a valuation can fall within a wide range depending on the subjectivity of the evaluator. The only way to ensure objectivity and a range that is full, fair, and reasonable from the public's point of view, is for regulators to engage independent experts to review any proposed valuation and to raise questions about its validity

Without an independent fair valuation, the people of Michigan will not know whether they are getting the full value of this charitable asset. The legislature has a duty to hold BCBS of Michigan accountable to the people of Michigan.

Level the playing field by augmenting rate review not diminishing it.

Other states are using the resources provided by the ACA to augment their rate review process and better protect consumers from unjustified rate increase. Michigan should level the playing field by

expanding OFIR's review of proposed rates, not diminishing it. Rate review, with prior approval, has protected consumers from unnecessary rate hikes. States such as Colorado, New York, and Oregon have robust rate review with the opportunity for consumers to comment on proposed rates before a final decision is made. The rate review applies to all plans regard of nonprofit, mutual or for-profit structure.

A community health impact study is needed prior to adopting final legislation.

A community health impact study is the best tool for assessing a conversion's likely impact on health services and impacts. A comprehensive and independent health impact study can provide a more complete picture of the effects of a proposed conversion on a community's access to quality, affordable health care.

In 2001, Kansas, North Carolina and Maryland all utilized independent experts to conduct health impact studies as part of their review of proposed Blue Cross Blue Shield conversion plans. In all three instances the conversion plan was either denied or abandoned once the true community impact of the proposal was better understood. Legislators, regulators and the public need to understand the full impact of allowing BCBSM to shed its charitable mission, before any meaningful public process can take place.

Any charitable trust established should be an independent nonprofit.

Any charitable trust established to receive the assets of BCBSM should be an independent nonprofit free of influence from the government and BCBSM. The board should be accountable to the public. The AG should establish the process to establish the foundation or other nonprofit charitable trust, and oversee the development of the mission and by-laws. Consumers Union and Community Catalyst published, Building and Maintaining Strong Foundations. This publication highlights best practices in establishing accountable foundations. We urge you to take the time to have a public process in establishing any foundation. But, this is putting the cart before the horse. You first must consider all the of health and valuation concerns of any conversion before establishing a foundation.

The consumer protections added to the bills are severable from the conversion of BCBM.

The parts of the bills that pertain to most favored nation clauses, network adequacy and open enrollment periods are completely unrelated to the change in ownership of BCBSM. Consumers Union would support enacting these provisions. But do not be fooled that the change in corporate structure for BCBSM is somehow tied to these consumer protections.

Conclusion

This is a large complex issue. Time is needed to fully engage all the stakeholders, and obtain all the information to properly consider any conversion. Consumers Union can share with you best practices from around the country. Please let us know if we can be of assistance in setting up a process to properly evaluate the proposal to allow BCBSM to convert to a mutual company that would engage all stakeholders, protect consumers from any negative health impacts, and preserve the full fair market value of the Michigan's charitable trust, BCBSM. Do not act hastily. You have a duty to hold BCBSM accountable and protect Michigan consumers.

1. The first part of the report discusses the general situation of the company and the results of the audit.

2. The second part of the report discusses the specific findings of the audit and the recommendations for improvement.

3. The third part of the report discusses the conclusions of the audit and the overall assessment of the company's financial position.

4. The fourth part of the report discusses the details of the audit process and the role of the auditors.

5. The fifth part of the report discusses the implications of the audit findings for the company's future operations.

6. The sixth part of the report discusses the overall conclusions of the audit and the recommendations for improvement.